

Unmanned Aerial Vehicles: “Drones”

What is the technology?

Unmanned Aerial Vehicles (or UAVs), more commonly known as “drones,” are remotely-launched and controlled airborne devices that resemble model airplanes or helicopters, and are frequently equipped with high-definition cameras.

While drone surveillance was once confined almost exclusively to military application, the decreasing price—and increasing availability—of drone technology has allowed domestic agencies, businesses, and private hobbyists to seize upon the technology for their own uses. Drones are now used by the US Border Patrol to scan treacherous portions of the Chihuahuan Desert, by farmers to survey acres of crops in a matter of minutes, or by firefighting crews to monitor the paths or progress of wildfires.

How does the technology affect local government?

Drones can also be a powerful tool for law enforcement to monitor crowds, conduct search and rescue operations, or surveil emergency scenes. In each of these scenarios, a drone achieves the same observational purpose as a manned police aircraft, but with several distinct advantages. First and foremost, the use of drones brings down the cost to the operating agency. Drones cost less to purchase, repair, maintain, and operate than manned aircraft, and present virtually no threat to the safety of their operators, unlike piloted craft. But drones have other distinct advantages as well. While manned aircraft must be launched from a helicopter pad or from an airstrip, drones come in all shapes and sizes. Many drones are small enough that they can be transported by—and deployed from—an ordinary squad car, giving them an advantage over traditional manned craft when time is of the essence.

In the private sector, while model aircraft have been familiar sights at parks and beaches for decades, even relatively inexpensive drones are equipped with sophisticated technology which present new challenges to Federal, State, and Local governments alike. While an operator piloting an ordinary model aircraft has limited range, and does not gain an additional vantage point from his activity, the operator of a drone can achieve much more. Most significantly, the high-definition camera attached to the device not only operates as the eye of the drone, but also its memory. This means that an operator can not only see, but may record—in motion-picture quality—activity that occurs within the privacy of walled-off areas such as backyards or enclosed lots. As drone use becomes more widespread, cities may find their existing codes and ordinances insufficient to address such privacy concerns.

What are local governments doing about it?

To date it is unclear whether a state or local law or regulation governing drones would be preempted by the federal government. The Federal Aviation Administration (FAA) currently considers most forms of drones “Model Aircraft,” so long as the devices remain below 400 feet, and within sight of the operator. The FAA considers larger, longer-ranged drones “Unmanned Aerial Systems,” and restricts their use to public or private entities which obtain special authorization from the FAA. The FAA is currently beginning a rulemaking proceeding to “establish a roadmap” for getting UAVs integrated into the national airspace, which will provide an opportunity for local governments to be heard on the eventual rules. In the interim, it is issuing fines and warning certain groups they are in violation of FAA policy—to mixed effect. For example, a federal

court recently dismissed a Texas search-and-rescue group's efforts to challenge the FAA's drone policy on procedural grounds, indicating that the FAA's informal email was not subject to judicial review. Other penalties issued by the FAA are also subject to challenges in courts which remain outstanding.

On its website, the FAA claims that any local or state regulation "that prohibits or limits the operation of an aircraft, sets standards for airworthiness, or establishes pilot requirements generally would be preempted." But "state and local governments do retain authority to limit the aeronautical activities of their own departments and institutions. Under most circumstances, it would be within state or local government power to restrict the use of certain aircraft, including a [drone], by the state or local police or by a state department or university" according to the FAA website. In fact, the California State Senate recently passed legislation imposing strict regulations on how law enforcement and other government agencies can use drones, and several communities have banned use of drones for police purposes out of concerns for privacy and safety. UAVs have already been banned in national parks, which indicates there may be a difference between commercial operations and model aircraft operations for purposes of preemption.

Municipalities may choose to explore other, more creative means of regulating drone operation, such as by clarifying existing property trespass laws to include aerial surveillance and operation, or by passing laws targeting the recording or videographic aspect of drone operation instead of the avionic operation itself.

Legal Issues To Watch Out For:

Drones present several potential legal issues cities should be aware of, including:

- Privacy concerns that are implicated by both public and private use of drones to surveil and record information and events that would otherwise be impossible to document.
- Preemption at the federal level is still a possibility, and regulations by local governments would need to be mindful of areas that federal law exclusively controls.
- The effect of drones and aerial surveillance on trespass laws.



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